

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Commission Investigation  
Regarding the Status of the Commercial Line  
Sharing Agreement Between Qwest  
Corporation and DIECA Communications d/b/a  
Covad

ISSUE DATE: May 18, 2005

DOCKET NO. P-5692,421/CI-04-804

ORDER DENYING RECONSIDERATION  
AND CLARIFYING ORDER ON OWN  
MOTION

**PROCEDURAL HISTORY**

On September 27, 2004, the Commission issued its ORDER DIRECTING QWEST TO FILE COMMERCIAL AGREEMENTS. In that Order, the Commission directed Qwest Corporation (Qwest or the Company) to file for review all agreements, such as the Qwest/Covad Line Sharing Agreement, that –

- are associated with elements of Qwest's network,
- make reference to unbundled network elements (UNEs),
- reflect a § 271 obligation, or
- reflect a state obligation.<sup>1</sup>

The Commission explained its decision as follows:

Reviewing such agreements will provide the Commission with information about the evolution of competition in the state generally. Also, the Commission finds that it must review agreements to determine whether or not they violate state prohibitions on discrimination or otherwise warrant approval (or rejection)

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<sup>1</sup> *In the Matter of a Commission Investigation Regarding the Status of the Commercial Line Sharing Agreement Between Qwest Corporation and DIECA Communications d/b/a Covad*, Docket No. P-5692,421/CI-04-804, ORDER DIRECTING QWEST TO FILE COMMERCIAL AGREEMENTS (September 27, 2004) at page 6 (*Covad Order*)..

pursuant to the 1996 Act. Failure to file the necessary agreements can harm the development of the competitive local exchange market.<sup>2</sup> By requiring Qwest to file such agreements, the Commission will provide itself and competing firms with the means to review the agreements' terms. Competitors will then be able to advise the Commission whether or not the agreements warrant additional Commission action.

*Covad* Order at page 6.

On October 7, 2004, Qwest filed a Motion for Reconsideration or Clarification. Qwest argued that the Commission does not have authority to require the filing of agreements governing the provision of non-section 251 obligations and that the Order was vague and difficult to interpret. The Company requested that the Commission vacate the portion of its Order requiring the filing of future agreements.

On October 18, 2004, the Minnesota Department of Commerce (the Department) filed a response to Qwest's request for reconsideration. The Department argued that the Commission should not reconsider its Order because it sufficiently states the Commission's reasoning and is not vague.

The Commission considered this matter on April 14, 2005.

## **FINDINGS AND CONCLUSIONS**

### **I. Denial of Motion to Reconsider**

The Commission has reviewed the record and the arguments of all parties.

The Commission finds that Qwest's motion does not raise new issues, does not point to new and relevant evidence, does not expose errors or ambiguities in the original Order, and does not otherwise persuade the Commission that it should reconsider its original decision. The Commission concludes that the original decision is the one most consistent with the facts, the law, and the public interest, and will therefore deny the motion for reconsideration.

### **II. Reconsideration/Clarification on Commission's Own Motion**

On its own motion, the Commission clarifies one aspect of the Order. The September 27, 2004 Order did not state and the Commission hereby emphasizes that it does not adopt the position that the Commission is authorized by federal law (§§ 251 and 252 of the Telecommunications Act of 1996) to

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<sup>2</sup> See *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket No. P-421/C-02-197 ORDER ASSESSING PENALTIES (February 28, 2003), ORDER AFTER RECONSIDERATION ON OWN MOTION (April 30, 2003).

review all agreements defined in Order Paragraph 1 for approval or rejection. Instead, the Commission indicated and this Order affirms the exploratory nature of its initial review of the parties' agreements. The Commission correctly stated that it would review agreements to determine "whether or not they warrant additional Commission action."<sup>3</sup>

To make that initial determination, the Commission must examine the agreement (with an opportunity for input from the Department) to determine whether it contains any network elements or other obligations required under § 251 of the Act or raises concern regarding an obligation under state law. If it does, the Commission must review the agreement further for approval or rejection.

### **ORDER**

1. Qwest's motion to reconsider the Commission's September 27, 2003 Order in this matter is denied.
2. On its own motion, the Commission reconsiders the Order and clarifies that each agreement that is required to be brought to the Commission pursuant to Order Paragraph 1 of the Commission's September 27, 2004 Order is subject to a review process as explained in the final paragraph of the FINDINGS AND CONCLUSIONS section of this Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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<sup>3</sup> *Covad* Order at page 6.

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